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BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

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JUN 25 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of Section 73.202(b),) RM-8760
Table of Allotments) MM Docket No. 96-88
FM Broadcast Stations)
(Manitowoc and Two Rivers, Wisconsin))

To: Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

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REPLY COMMENTS

Lyle Robert Evans, d/b/a High Mark Radio Company ("Applicant"), by his attorneys, hereby submits his reply to comments filed in the above-referenced matter, requesting allotment of Channel 255A to Two Rivers, Wisconsin. In conducting a full review of the showings contained herein, the Commission will find no reason to change its proposal to amend the FM Table of Allotments for Two Rivers, Wisconsin. The comments consist of only frivolous allegations and irrelevant facts that do not affect Applicant's proposal. Thus, consistent with policy and precedent, the Commission must grant the above-referenced allotment.

The Commission, in a footnote to the above-referenced Notice of Proposed Rulemaking, makes an editorial correction for Station WQTC, Channel 272A, which was originally allotted to Manitowoc, Wisconsin but used at Two Rivers, Wisconsin, under the old-10 mile rule. The Commission, without accepting any comments, named Manitowoc as the proper city of license for WQTC to reflect its initial allotment. Some of the comments filed in this matter raised

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concern as to the Commission's action. As the Commission noted, correcting the city of license is only editorial in nature. It is within the Commission's authority to implement such corrections without creating a public notice and comment period, making the comments filed in this matter irrelevant and unnecessary. See 5 U.S.C. 553(b)(A) and (B).

The comments further state that no site exists that would allow for city grade coverage of Two Rivers, because of the proximity of the proposed reference coordinates for the Two Rivers allotment to the local airport, and because the construction of a tower might be aesthetically displeasing. The only support for these allegations are two letters, one from the Mayor of Manitowoc about his concern for maintaining the aesthetic integrity of Manitowoc, and one from an owner of one of the largest parcels of land within Manitowoc about his reluctance to allow a tower on his site. Such statements provide no basis whatsoever for the FAA allegations, nor do they provide competent evidence that a broadcast tower cannot be built to properly serve the Two Rivers community. The letters do not claim that zoning will in fact be denied for the proposed location, instead only claiming that the tower would not "be compatible" with existing land uses. Clearly, this does not constitute evidence that no appropriate site could be located, as the letter from the mayor itself evidences a willingness to discuss and explore other possible tower locations "to determine a location that everyone involved can support."

As Applicant has submitted an available window in which a fully spaced station could be located, in which a number of different locations would be suitable by not interfering with the airport and allowing for full service to be provided to the Two Rivers community, it cannot be reasonably inferred from the limited evidence provided by commenters that no possible transmitter site for the allotment can be found. Absent such a showing, the claims of the unavailability of a usable site must be rejected. See Mount Wilson FM Broadcasters, Inc., 884

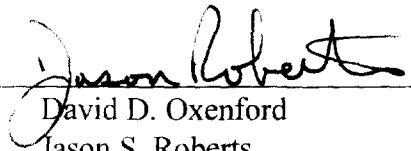
F.2d 1462 (D.C. Cir. 1989); Pinckneyville, Illinois, 41 RR2d 69 (Broadcast Bur. 1977) (holding that the applicant merely has to show a reasonable assurance of a site and not a particular specified site, placing the burden on an interested party to show with technical support that there is no possible site location.). Applicant hereby reiterates its intent to apply for and construct the new Two Rivers station if the allotment is made, and certainly believes that a usable site can be located for the proposed allotment.

CONCLUSION

Accordingly, it is respectfully requested that the Commission amend the FM Table of Allotments to add Channel 255A to Two Rivers. Wisconsin.

Respectfully submitted,

HIGH MARK RADIO COMPANY

By: 
David D. Oxenford
Jason S. Roberts

Its Attorneys

FISHER WAYLAND COOPER LEADER
& ZARAGOZA L.L.P.
2001 Pennsylvania Avenue, N.W.
Suite 400
Washington, D.C. 20006
(202) 659-3494

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